

AGREEMENT FOR PLANNING SERVICES

THIS AGREEMENT is entered into between the City of West Lafayette (Client) and Arnett Muldrow & Associates Ltd. (Planner), for the following reasons:

1. The Client intends to prepare a Update to the West Lafayette Strategic Plan; and
2. The Client requires certain planning, economic development, marketing and urban planning services in connection with the Project (Services); and,
3. The Planner is prepared to provide the Services.

In consideration of the promises contained in this Agreement, the Client and the Planner agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be _____.

ARTICLE 2 - GOVERNING LAW

This Agreement shall be governed by the laws of the State of Indiana.

ARTICLE 3 - SCOPE OF SERVICES

The Planner shall provide the Services described in Attachment A, Scope of Services.

ARTICLE 4 - SCHEDULE

The Planner shall exercise its reasonable efforts to perform the Services according to the Schedule set forth in Attachment A, Scope of Services.

ARTICLE 5 - COMPENSATION

The Client shall pay The Planner in accordance with Attachment A, Scope of Services.

Invoices shall be due and payable upon receipt. The Client shall give prompt written notice of any disputed amount and shall pay the remaining amount. Invoice amounts not paid within 30 days after receipt shall accrue interest at the rate of 1.5% per month (or the maximum rate permitted by law, if less), with payments applied first to accrued interest and then to unpaid principal. The Client shall pay The Planner's reasonable attorneys' fees incurred in connection with any litigation instituted to recover invoice amounts.

ARTICLE 6 – CLIENT’S RESPONSIBILITIES

The Client shall be responsible for all matters described as Client responsibilities in Attachment A, Scope of Services.

ARTICLE 7 - STANDARD OF CARE

The same degree of care, skill, and diligence shall be exercised in the performance of the Services as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. No other warranty, express or implied, is included in this Agreement or in any drawing, specification, report, opinion, or other instrument of service, in any form or media, produced in connection with the Services.

ARTICLE 8 - INDEMNIFICATION AND LIABILITY

General. Having considered the potential liabilities that may exist during the performance of the Services, the relative benefits and risks of the Project, and the Planner's fee for the Services, and in consideration of the promises contained in this Agreement, The Client and The Planner agree to allocate and limit such liabilities in accordance with this Article. Indemnification. The Planner agrees to indemnify and hold harmless the Client and its successors and assigns, from and against any and all claims, demands, actions, charges, losses, liabilities, judgments, damages, and expenses,

(including, specifically, the Client's reasonable attorneys' fees)(collectively "Claims") to the extent such Claims are caused by the Planner's willful or intentional misconduct, negligent acts, errors, or omissions arising out of its performance of the Services. In the event Claims are caused by the joint or concurrent negligence of The Planner and The Client, they shall be borne by each party in proportion to its own negligence.

Limitation of Liability. To the fullest extent permitted by law, the total aggregate liability of The Planner and its subconsultants to The Client for all Claims resulting in any way from the performance of the Services shall not exceed the insurance limits set forth in Article 9 of this Agreement.

Consequential Damages. To the fullest extent permitted by law, The Planner shall not be liable to the Client for any consequential damages resulting in any way from the performance of the Services.

Survival. The terms and conditions of this Article shall survive completion of the Services, or any termination of this Agreement.

ARTICLE 9 - INSURANCE

During the performance of the Services under this Agreement, The Planner shall maintain the following insurance:

- (a) General Liability Insurance, with a combined single limit of \$1,000,000 per occurrence and \$1,000,000 aggregate.
- (b) Professional Liability Insurance, with a limit of \$1,000,000 annual aggregate.

The Planner shall, upon written request, furnish the Client certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to the Client.

The Planner and the Client waive all rights against each other and their directors, officers, partners, commissioners, officials, agents, and employees for damages covered by property insurance during and after the completion of the Services.

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

The Planner shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project; (b) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to The Planner, to fulfill contractual responsibilities to the Client or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to The Planner in Attachment A, Scope of Services.

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

Because the Planner has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet Project schedules, The Planner's opinion of probable costs and of Project schedules shall be made on the basis of experience and qualifications as a professional Planner. The Planner does not guarantee that proposals, bids, or actual Project costs will not vary from The Planner's cost estimates or that actual schedules will not vary from The Planner's projected schedules.

ARTICLE 12 - REUSE OF DOCUMENTS

All documents, including, but not limited to, drawings, specifications, and computer software prepared by The Planner pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by the Client or others on modifications or extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by The Planner for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to The Planner. The Client shall indemnify and

hold harmless the Planner and its subconsultants against all judgments, losses, damages, injuries, and expenses, including reasonable attorneys' fees, arising out of or resulting from such reuse. Any verification or adaptation of documents will entitle The Planner to additional compensation at rates to be agreed upon by the Client and the Planner.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, The documents, drawings, and specifications prepared by the Planner and furnished to the Client as part of the Services shall become the property of the Client; provided, however, that the Planner shall have the unrestricted right to their use. The Planner shall retain its copyright and ownership rights in its design, drawing details, specifications, data bases, computer software, and other proprietary property. Intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of the Planner.

ARTICLE 14 - TERMINATION AND SUSPENSION

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

The Client may terminate or suspend performance of this Agreement for the Client's convenience upon written notice to the Planner. The Planner shall terminate or suspend performance of the Services on a schedule acceptable to the Client, and the Client shall pay the Planner for all the Services that have been performed in accordance with this Agreement as of the date of termination or suspension. Upon restart of suspended Services, an equitable

adjustment shall be made to the Planner's compensation and the Project schedule.

ARTICLE 15 - DELAY IN PERFORMANCE

Neither the Client nor The Planner shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either the Client or the Planner under this Agreement. The Planner shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances.

Should such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

ARTICLE 16-RELATIONSHIP OF PARTIES

The Planner and the Client hereby agree that their relationship is that of independent contractors, and nothing in this Agreement shall create nor be deemed to create a joint venture, partnership, principal/agent, employer/employee, or any other form of relationship other than that of independent contractors.

ARTICLE 17 - NOTICES

Any notice required by this Agreement shall

be made in writing to the address specified below:

The Client:

The City of West Lafayette
Chandler Poole, Director of Development
609 West Navajo Street
West Lafayette, Indiana 47906
Phone: 765-775-5100
FAX: 765-775-5248

The Planner:

Arnett Muldrow & Associates, Ltd.
Tripp Muldrow, President
Post Office Box 4151
Greenville, SC 29608
Phone: 864-233-0950
FAX: 864-233-0840

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Client and the Planner.

ARTICLE 18 - DISPUTES

In the event of a dispute between the Client and The Planner arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation.

Should such negotiation or mediation fail to resolve the dispute, either party may pursue resolution of the dispute by arbitration; provided, however, in the event the parties are unable to reach agreement to arbitrate under terms reasonably acceptable to both parties, either party may pursue resolution in any court having jurisdiction.

During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

ARTICLE 19 - WAIVER

A waiver by either the Client or the Planner of any breach of this Agreement shall be in

writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 20 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 21 - INTEGRATION

This Agreement, including Attachment A incorporated by this reference, represents the entire and integrated agreement between the Client and The Planner. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

The Client and the Planner each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to the successors, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this Agreement.

ARTICLE 23 - ASSIGNMENT

Neither the Client nor the Planner shall

assign any rights or duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, The Planner may assign its rights to payment without the Client's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent the Planner from engaging independent consultants, associates, and

subcontractors to assist in the performance of the services.

ARTICLE 24 - NO THIRD PARTY RIGHTS

The Services provided for in this Agreement are for the sole use and benefit of the Client and the Planner. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Client and the Planner.

IN WITNESS WHEREOF, the Client and the Planner have executed this Agreement.

The City of West Lafayette
(The Client)

By _____

Title _____

Date _____

Arnett Muldrow & Associates, Ltd.
(The Planner)

By _____

Title: President

Date _____

SCOPE ATTACHMENT A

DESCRIPTION OF THE ENVISIONED PROJECT/PROJECT WORK ELEMENTS

The project scope below is designed to maximize the input gathered for an update to West Lafayette's strategic plan. We strongly believe in providing a multitude of ways for the public and key stakeholders to become involved in the project.

Task One: Information Gathering and Background Review

Arnett Muldrow will review all existing planning efforts for West Lafayette including the 2005 Strategic Plan, the zoning code, and older district or comprehensive plans, revitalization strategies, community histories, and marketing material for both the city and Purdue. This will be an important step to understand what has happened in the past as well as to coordinate the Strategic Plan update with other efforts underway.

Task Two: Project Kickoff

Arnett Muldrow will conduct a four-day work session in West Lafayette that will involve the following:

1. A preliminary meeting will be held with a steering committee of key stakeholders from West Lafayette. This steering committee will provide guidance to Arnett Muldrow and periodically evaluate the progress of the master plan process. We will depend on the client to assemble the appropriate steering committee with some guidance from the consultant team.
2. We will conduct reconnaissance of the entire city as well as a detailed photo-shoot and mapped notes on the community.
3. Arnett Muldrow will conduct up to fifty leadership interviews and roundtable workshops (which may occur over the duration of the project) to assess community stakeholders' perspectives on the local economy, the successes downtown and throughout the city, their desires for future development in all land use types, and how the city and its sub-districts are currently marketed and perceived. We try to talk with key property owners, business and building owners, and leaders of community group, major stakeholders at Purdue, Chamber of Commerce representatives, and others as desired by West Lafayette. We will work closely with the Steering Committee to identify the people to be interviewed but will rely on the client to set the appointment times with the interviewees. We have found that one-on-one meetings allow for candid and frank discussions of issues (while also potentially engaging naysayers in a positive way).

4. We will meet with selected community and business groups themselves to garner input and share progress on the effort. We will work closely with the client to determine which individuals and groups to meet with. Typically these meetings include professionals in real estate, civic groups, neighborhood advocates, and merchant groups. We also like to meet with the youth of a community to garner their input. For West Lafayette we will want to meet both with high school and Purdue University students in focus groups. Frequently, we have found that young people have keen insight on a community's market strengths and weaknesses. We will conduct up to ten group roundtables.
5. Finally, we will wrap up the kick-off session with Town Hall Meeting One. This will be the first of three open sessions and will allow the project team a chance to explain the efforts of the study. The main purpose of Town Hall Meeting One is to be a "listening session" designed to garner input on desires and needs from an openly invited audience. Our process includes a facilitated work session designed to gather input without being duplicative of prior planning efforts.

Task Three: Assessment

We will examine the land use trends in West Lafayette, demographics of the community, market forces including the potential and magnitude of attracting new retail, office, residential, and other land use growth to the community. The assessment will provide us some trends and figures to couple with the input garnered in Task 2.

Task Four: Survey and Online Input Techniques

We will work with West Lafayette to develop an online survey to be conducted in the community. The survey will provide an alternative way for citizens to become engaged in the Strategic Plan process. We will also establish a Facebook Page and a blog for citizens to provide moderated input on the Strategic Plan. We have found these new techniques offer us insight and methods to gather input not frequently used in planning processes in the past.

Task Five: Strategic Assessment Report, Presentation, and Town Hall Meeting 2

The project team will return to West Lafayette to conduct two major meetings. The first will be a briefing to the project Steering Committee on the findings of the study thus far. The project team will show both the "raw input" from tasks two through five as well as the input summarized around "emerging themes." Typically, we try to keep the project themes from between four and six themes. The steering committee meeting will be used to prepare for the upcoming Town Hall Meeting Two.

The project team will work closely with the Steering Committee to organize a Town Hall Meeting Two: *Public Workshop, Where Do We Go From Here?* with the goal of creating a

collaborative vision and providing participants with the opportunity for direct input into the strategic approaches for future city. The objectives of this workshop will be to:

- Define the values and guiding principles that should direct the development of the of the city;
- Define long term goals and broad scale concerns of the city;
- Encourage a strong sense of community that will create more viable and profitable and contextual development;
- Discuss precedents that exist regionally and internationally as guideposts for West Lafayette;
- Create a "perfect world" and "plausible futures" visions for the project area; and
- Let participants know how they can stay involved in the planning process.

The workshop will be divided into two parts. As participants enter the workshop space they will be handed a summary of the Strategic Assessment Report findings. Base plans, maps, photos and charts will be displayed in the meeting room. During the first half of the meeting the project team will describe what they have found out about the West Lafayette. Essentially, we will be "leveling the playing field", so that all of the participants have a command of the facts.

The information will be presented in a PowerPoint slide show that will summarize the City's existing conditions, issues and potential opportunities. After the slide presentation we will have a brief discussion before breaking for refreshments. Following the break members of the project team will facilitate an interactive "visioning session." Participants will be guided by the project team through a fast paced series of creative thinking exercises that will help them clarify their values, define their principals and describe their vision for the West Lafayette. The project team will also help participants to identify potential redevelopment locations and associated strengths, weaknesses, opportunities and threats. It is anticipated that this session will be approximately 2 hours long and held on an evening to allow for the best attendance.

Task Six: The Strategic Action Plan – How Do We Get There?

The Project Team will develop a Strategic Action Plan that identifies recommendations, goals, tasks, time frames, responsible parties, funding mechanisms, and priorities for the Strategic Plan. The Strategic Action Plan will be further enhanced by consistent and meaningful input and feedback from City officials, key stakeholders and the general public.

The Strategic Action Plan will be organized into the following elements:

- Short Term, Medium Term and Long Term Implementation Programs (Including funding programs)
- Goals and Objectives Matrix (Detailed by responsibility, existing and potential funding sources)
- Program Evaluation Matrix (For monthly, quarterly and annual reviews by the City)

The goal of the implementation strategy is for all of the various stakeholders to be able to use it as a guiding document. The team will include within the Action Plan a detailed matrix (or “strategy board”) with short, medium, and long-range tasks. Each task will be organized by individual strategy (such as those outlined in the RFP: Government Services, Cultural and Recreational, Growth and Economic Development, Public Safety, Environmental, Housing and Neighborhoods, and Traffic/Parking) and will include “Demonstration” or short-term projects to be completed in one to two years, “Next Steps” or mid-range projects to be completed in three to five years, and “Completion” or long-range projects to be completed in five to ten years. Individual tasks related to each strategy will be assigned to specific lead agencies to provide structure and a means of determining accountability. This matrix has resulted in significant success for communities where a variety of stakeholders are each working on projects to further the goals of the plan. We suggest a semi-annual Strategic Plan Summit where progress reports on all of these efforts takes place.

Task Seven: Plan Adoption Process and Final Presentations

The project team will present the plan and its implementation strategy to the Steering Committee for review. This will serve as a “leadership roundtable” assess the feasibility of the implementation strategy, assign “lead dog” responsibility to the various stakeholder partners, and map out the formal adoption process and public plan unveiling.

At the appropriate time, the project team will conduct a final presentation to the public of the plan along with its implementation strategy. This Town Hall Meeting Three will be a “celebration session” where the various stakeholders can come together to view the plan and understand the steps they are likely to see take place in the coming months and years.

The project team will also present the plan to the various groups as needed for adoption such as the Planning Commission and City Council.

PROJECT TIMELINE

We propose an aggressive timeline for the project involving an intensive three month process:

CITY PLANNING
ECONOMIC DEVELOPMENT
COMMUNITY BRANDING
HISTORIC PRESERVATION

Task one: week one
Task two: week two
Task three: week three, four, and five
Task four: week three, four, and five
Task five: week six
Task six: week seven, eight, and nine
Task seven: week ten, eleven, and twelve (dependent on formal meetings of Boards/Council)

PROJECT FEE

Arnett Muldrow proposes to complete the West Lafayette Strategic Plan Update for a lump sum fee of \$14,000 inclusive of all expenses.